

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
CHARLOTTESVILLE DIVISION

No. 3:18-cv-00113-GEC

SOUTHERN ENVIRONMENTAL LAW
CENTER

Plaintiff,

v.

COUNCIL ON ENVIRONMENTAL
QUALITY,

Defendant.

**MOTION FOR PRELIMINARY
INJUNCTION**

Pursuant to Federal Rule of Civil Procedure 65 and Local Civil Rule 11, SELC hereby respectfully moves for a preliminary injunction enjoining CEQ from advancing its proposed rulemaking titled ‘Update to the Regulations Implementing the Procedural Provisions of the National Environmental Policy Act’, 85 Fed. Reg. 1,684, until such time as CEQ has completed production of SELC’s FOIA request in the above captioned matter. The documents requested by SELC, and which SELC is legally entitled to under the law, are essential to SELC’s ability to participate in the related rulemaking as fully as possible and at a meaningful time.

Specifically, SELC requests the Court protect the *status quo* by:

- (1) ordering CEQ to produce the documents at issue before the close of the public comment period for the rulemaking; or
- (2) ordering CEQ to delay the close of the public comment period for the rulemaking until CEQ anticipates completing SELC’s request—November 2020; or
- (3) enjoining CEQ from closing the comment period until it provides SELC with the requested documents.

In support of this Motion, SELC has filed and herein incorporates by reference, the accompanying Memorandum in Support of Plaintiff's Motion for Preliminary Injunction.

SELC shows that it is likely to prevail on the merits of its claims because CEQ failed to make a determination on SELC's request within the statutory timeframe required by FOIA, and because CEQ has failed to promptly provide responsive documents. Further, CEQ has failed to invoke or demonstrate that any "exceptional circumstances" warrant delay in processing SELC's request.

SELC shows that absent a preliminary injunction maintaining the *status quo* it will suffer irreparable harm because it: (1) will be unable to participate in the rulemaking in the most fully informed manner; (2) will be unable to inform the public and decision makers about the rulemaking as fully as possible in a meaningful timeframe; and (3) stands to be placed at a disadvantage in any litigation that may follow due to an inability to raise issues and provide evidence contained in requested documents.

SELC shows that the balance of harms favors an injunction, because CEQ will benefit, and not suffer harm from, a fully informed public comment process. Further SELC shows that an injunction is in the public interest because this rulemaking will have a significant impact on government transparency and environmental protection in the United States and the public has already demonstrated significant interest in ensuring that it may participate in a meaningful and informed way.

Therefore, SELC respectfully requests that the Court:

- 1) Issue an order that either:
 - a) orders CEQ to produce the documents at issue before the close of the public comment period for the rulemaking; or

- b) orders CEQ to delay the close of the public comment period for the rulemaking until CEQ anticipates completing SELC's request—November 2020; or
 - c) enjoins CEQ from closing the comment period until it provides SELC with the requested documents.
- 2) Set this matter for an expedited briefing and schedule a hearing in the next twenty one days;
 - 3) Grant SELC its reasonable attorneys' fees; and
 - 4) Grant any further relief as the Court deems proper.

Respectfully submitted, this 13th day of February, 2020.

/s/ Kimberley Hunter
Kimberley Hunter – NC Bar No. 41333 (*pro hac vice*)

/s/ Morgan Butler
Morgan Butler– VA Bar No. 70409

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CERTIFICATE OF SERVICE

I hereby certify that on this the 13th day of February, 2020, I served the foregoing on the party below by electronically filing it with the Clerk of Court on this date using the CM/ECF system, which will sent notification of such filing to, and pursuant to Local Civil Rule 7(g)(3) shall constitute service upon, the following:

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/s/ Kimberley Hunter
Kimberley Hunter
Southern Environmental Law Center